IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER

District Level Screening Committee, Jodhpur & anr.	vs.	M/s Malbrough Polycem Private Limited,Jodhpur

S.B. Civil Sales Tax Revision No.479/2002 against the judgment dated 27.6.2001 passed by the Rajasthan Tax Board, Ajmer in Appeal No.666/2000/Jodhpur-M/s M/s Malbrough Polycem Private Limited, Jodhpur v. District Level Screening Committee, Jodhpur and anr.

Date of Judgment: February 22, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Sangeet Lodha for the petitioners.
Mr. Anjay Kothari for the respondent.

BY THE COURT:

Heard learned counsel for the parties.

The revenue is aggrieved against the order of the Tax Board's decision dated 27.6.2001, by which the Tax Board allowed the appeal of the respondent-assessee and set aside the order of the District Level Screening Committee (for short “the DLSC”) dated 11.12.1997.

Brief facts of the case are that the assessee applied for grant of exemption from payment of tax under the Rajasthan Sales Tax Incentive Scheme, 1987 (for short “the Scheme of 1987”) and that exemption was granted by taking decision by the DLSC on 25.11.1992. It is stated that

there was audit objection and, therefore, the DLSC reviewed its decision in its meeting dated 11.12.1997 and it was decided that the assessee shall not be entitled for the tax exemption benefit on pre-operative expenses of Rs.6,82,659/-. The Tax Board held that the DLSC had no jurisdiction to review its own decision in view of the fact that as per clause 5A, the matter could have been reviewed only within period of 160 days, that too on moving appropriate petition for review of the decision of the DLSC. The Tax Board also held that the order of the DLSC is illegal as the DLSC reviewed and amended the earlier decision without giving opportunity of hearing to the assessee. The Tax Board further held that even if any application could have been moved under Section 37(2) of the Rajasthan Sales Tax Act, 1994 for amending the earlier decision of the DSLC then that could have been moved within period of three years even then that period of three years already expired on 29.1.1998 and, therefore, also the subsequent decision of the DLSC reviewing the earlier decision is barred by time.

The learned counsel for the petitioner vehemently submitted that in case there is any necessity of giving notice or opportunity of hearing to the petitioner then the matter could have been remanded to the DLSC by the Tax Board and the Tax Board could not have set aside the decision of the DLSC by which the DLSC has decided not to give benefit of a specified sum falling under the category of pre-operative expenses.

It is also contended by the learned counsel for the petitioner-revenue that the Tax Board committed error of law as the Tax Board ignored sub-clause (c) of Clause 9 of Section 1987. According to the learned counsel for the petitioner-revenue, the DLSC has been given power to amend, suspend and even cancel the already sanctioned eligibility certificate. In view of the above fact that a mistake was committed while granting certificate, the DLSC decided to amend the certificate by reducing the amount then the DLSC has acted within its power and, therefore, the order was within jurisdiction. It is also submitted that for amendment or even for cancellation of already sanctioned eligibility certificate by the DLSC under sub-clause (c) of Clause 9 of the Scheme of 1987, there is no limitation prescribed and, therefore, the Tax Board committed error of law in holding that the act of the DLSC was barred by time.

The learned counsel for the respondent submitted that the Tax Board took note of the fact that the assessee already availed the benefit under the certificate long back and in view of the judgment of the Hon'ble Apex Court delivered in the case of Birla Jute and Industries Ltd. vs. State of M.P. and another ((2000) 5 SCC 271), the exemption certificate cannot be withdrawn retrospectively particularly when the exemption has already been availed on the basis of the said exemption certificate. It is also submitted that the order passed by the DLSC dated

11.12.1997 is absolutely void because of the simple reason that adverse order has been passed by the DLSC without affording opportunity of hearing to the assessee. It is also contended that as per clause 9 of the Scheme of 1987, the audit objection itself cannot be a ground for reviewing the decision by the DLSC. It is also submitted that sub-clause (c) of clause 9 of the Scheme of 1987 cannot be read bereft of preceding para of clause 9 itself and, therefore, the order passed by the DLSC dated 11.12.1987 was absolutely illegal and has been rightly set aside by the Tax Board by impugned order.

I considered the submissions of the learned counsel for the parties.

In view of the finding of fact recorded by the Tax Board that before taking a decision to amend the exemption certificate of the assessee, the assessee already availed the benefit under the certificate, the decision of the Hon'ble Apex Court delivered in the case of Birla Jute & Industries Ltd. (supra) fully covers the controversy and, therefore, in the facts of the case, the Tax Board, if on other grounds, set aside the subsequent decision of the DLSC, this Court is not inclined to interfere in the order passed by the Tax Board because of the decision given by the Hon'ble Apex Court in the case of Birla Jute & Industries Ltd. (supra).

It will be worthwhile to mention here that while issuing notice of

the revision petition, this Court on 29.5.2002 framed question of law as under:-

> "Issue notice limited to the extent as why the appellate authority should not have remanded the case to the District Level Screening Committee in view of the provisions contained under clause 9(c) in the Scheme providing that in case certain claims have been accepted though it was inadmissible in law, whether it could have been withdrawn without giving notice to the other party even if it had been withdrawn without giving the notice, the appellate authority should have remanded the case to the Committee."

Since Hon'ble the Apex Court held that in the facts and circumstances, if benefit under the tax exemption certificate has been availed by the assessee, then the revocation or amendment of the tax certification putting the assessee in disadvantageous position can be from the date of revocation, the question of remanding the matter to the lower authority will be a futile exercise only. Therefore, if the matter has not been remanded by the Tax Board to the lower authority, in view of sub-clause (c) cause 9 of the Scheme of 1987, the Tax Board has not committed any error of law.

In view of the above discussion, the revision petition is dismissed.

(PRAKASH TATIA),J.

mlt.